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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2015–0012; Notice No. 156]

Importation of Distilled Spirits, Wine, Beer, Tobacco Products, Processed Tobacco, and Cigarette Papers and Tubes; Availability of Pilot Program and Filing Instructions to Test the Collection of Import Data for Implementation of the International Trade Data System

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of availability and request for comments.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) is announcing a pilot program in which importers, Customs and Border Protection (CBP), and TTB will test, as part of the International Trade Data System (ITDS) project, the electronic collection of import data required by TTB and the transfer of that data through CBP to TTB. TTB is also announcing the availability of and requesting comment on a draft set of instructions that describes how importers of distilled spirits, wine, beer, tobacco products, processed tobacco, or cigarette papers and tubes may file information electronically to meet TTB requirements at the importation of those commodities. The information gathered through the comments on the draft instructions and pilot program and through an evaluation

of the pilot program will allow TTB and CBP to refine their implementation of ITDS.

DATES: Comments on the draft Filing Instructions must be received by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

The pilot program will commence no earlier than August 19, 2015, and will continue until concluded by publication of a notice in the **Federal Register** ending the test. Pilot program participants should consult the following Web site to determine which ports are or will be operational for the test:

<http://www.cbp.gov/document/guidance/list-aceitds-pga-message-set-pilot-ports>.

Comments on the pilot will be accepted through the duration of the pilot.

ADDRESSES: Please send your comments on the draft Automated Commercial Environment Filing Instructions for TTB-Regulated Commodities and on the pilot program to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this document as posted within Docket No. TTB–2015–0012 at Regulations.gov, the Federal e-rulemaking portal);
- U.S. Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Box 12, Washington, DC 20005; or
- Hand delivery/courier in lieu of mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 400, Washington, DC 20005.

See the **Public Participation** section of this document for specific instructions and requirements for submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about the filing instructions or the pilot program, contact John Kyranos, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW, Box 12, Washington, DC 20005; telephone (202) 453-1039, extension 001; or e-mail regulations@ttb.gov.

For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

TTB Authority

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the Department of the Treasury regulates, among other things, the importation of distilled spirits, wine, and malt beverages pursuant to the Federal Alcohol Administration Act (FAA Act). TTB also administers the provisions of the Internal Revenue Code of 1986, as amended (IRC), with respect to the taxation of distilled spirits, wine, beer, tobacco products, processed tobacco, and cigarette papers and tubes. These statutory provisions are the basis of TTB regulations that require importers to submit certain information to U.S. Customs and Border Protection (CBP) upon importation.

Section 103(a) of the FAA Act (27 U.S.C. 203(a)) requires that a person obtain a permit before engaging in certain activities related to distilled spirits, wine, and malt beverages, including importation. This section of the FAA Act states that it shall be unlawful, except pursuant to a “basic permit” issued by the

Secretary of the Treasury (the Secretary), to engage in the business of importing into the United States distilled spirits, wine, or malt beverages. Section 103(a) of the FAA Act also states that it is unlawful, except pursuant to a basic permit, for any person so engaged to sell, offer or deliver for sale, contract to sell, or ship, in interstate or foreign commerce, directly or indirectly or through an affiliate, distilled spirits, wine, or malt beverages so imported. The terms “distilled spirits” and “wine,” when used in the context of the FAA Act, apply only to distilled spirits and wine for nonindustrial use.

Additionally, section 105(e) of the FAA Act (27 U.S.C. 205(e)) authorizes the Secretary to prescribe regulations relating to the labeling of distilled spirits, wine, and malt beverages. With regard to imported commodities, the FAA Act provides that no person shall remove from customs custody, in bottles, for sale or any other commercial purpose, distilled spirits, wine, or malt beverages, without having obtained a certificate of label approval and being in possession of that certificate.

Chapter 51 of the IRC pertains to the taxation and regulation of distilled spirits (including spirits used for both beverage and nonbeverage purposes), wines, and beer (see 26 U.S.C. chapter 51). The IRC imposes a Federal excise tax on all distilled spirits, wine, and beer manufactured in or imported into the United States. See, respectively, 26 U.S.C. 5001, 5041, and 5051. In general, the tax on imported distilled spirits, wine, and beer is collected by CBP, along with any import duties. The IRC at 26 U.S.C. 5232, 5364, and 5418 provides for limited circumstances under which products may be withdrawn from customs

custody without payment of tax for transfer to the bonded premises of an industry member regulated by TTB. These provisions cover distilled spirits imported in bulk and released from customs custody for transfer to a distilled spirits plant, natural wine (as defined in 26 U.S.C. 5381) imported in bulk and released from customs custody for transfer to a bonded wine cellar, and beer imported in bulk and released from customs custody for transfer to a brewery. Under these circumstances, the proprietor of the bonded premises becomes liable for the tax on the product withdrawn from customs custody upon its release from customs custody, and the applicable tax is collected by TTB when the product is removed from the distilled spirits plant, bonded wine cellar, or brewery, respectively. The IRC also contains provisions under which imported distilled spirits may be entered free of tax by the United States or any governmental agency of the United States for nonbeverage purposes. See 26 U.S.C. 5313. Furthermore, industrial alcohol may under certain circumstances be imported free of tax from the Virgin Islands to qualified industrial alcohol users. See 26 U.S.C. 5314(b).

Chapter 52 of the IRC contains excise tax and related provisions pertaining to tobacco products and cigarette papers and tubes. Section 5701 of the IRC (26 U.S.C. 5701) imposes Federal excise tax on such commodities manufactured in or imported into the United States. In general, the tax on imported tobacco products and cigarette papers and tubes is collected by CBP, along with any import duties. Under 26 U.S.C. 5704, tobacco products and cigarette papers and tubes may be released from customs custody under certain conditions without payment of tax for delivery to the proprietor of an export

warehouse or a manufacturer of tobacco products or cigarette papers and tubes. Upon removal from the manufacturer's premises, the tax on such products is collected by TTB.

Chapter 52 of the IRC also contains provisions pertaining to the manufacture and importation of processed tobacco, which is not subject to tax. Section 5712 of the IRC (26 U.S.C. 5712) requires that importers of tobacco products or processed tobacco, before engaging in such business, apply for and obtain a permit.

TTB administers the FAA Act and chapters 51 and 52 of the IRC pursuant to section 1111(d) of the Homeland Security Act of 2002, as codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120-01, dated December 10, 2013, to the TTB Administrator to perform the functions and duties in the administration and enforcement of these provisions. Responsibility for collecting, accounting for, and depositing as internal revenue the excise taxes due incident to the importation of alcohol and tobacco products is vested by statute with the Secretary of the Treasury (see 6 U.S.C. 212), but has been delegated to the Secretary of Homeland Security and CBP. See Treasury Department Order 100-16, 68 FR 28322 (May 23, 2003), and 6 U.S.C. 212 and 215(1).

The TTB regulations at 27 CFR parts 1, 4, 5, and 7 set forth requirements related to certain FAA Act provisions. Section 1.20 (27 CFR 1.20) repeats the FAA Act basic permit requirement for importers of distilled spirits, wine, and malt beverages. Parts 4, 5, and 7 require that, in order for an imported distilled spirit,

wine, or malt beverage to be released from customs custody, a certificate of label approval must be “deposited with the appropriate Customs officer at the port of entry.” See 27 CFR 4.40, 5.51, and 7.31, respectively, regarding wine, distilled spirits, and malt beverages. Parts 4 and 5 also include several requirements related to certification of the origin and, in some cases, method of production of certain alcohol beverages by a foreign government. In general, certificates relating to origin or method of production are required to “accompany” the imported commodities. See 27 CFR 4.27, 4.45, and 5.52.

The TTB regulations at 27 CFR part 27 set forth requirements related to the IRC provisions that apply to importations of distilled spirits, wine, and beer. One example of a requirement for which records must be filed with CBP is the importation of distilled spirits in bulk without payment of tax, which is subject to the requirements in subparts H and I of part 27. For such releases, the person importing the spirits must prepare a record of information that is given to the customs officer upon release of the spirits from customs custody. Part 27 also includes requirements to submit information for transfers of distilled spirits without payment of tax from customs custody to a distilled spirits plant (27 CFR 27.172) and for imports of distilled spirits free of tax for use of a government agency (27 CFR 27.183).

The TTB regulations at 27 CFR part 26 address distilled spirits, wine, and beer brought into the United States from Puerto Rico or the Virgin Islands and contain provisions similar to those in part 27, as well as requirements associated with tax-free shipments to industrial alcohol users (27 CFR 26.292). (Note: As

provided in 19 CFR 101.1, Puerto Rico is within the customs territory of the United States; the Virgin Islands is not. As described below, this notice addresses a document and pilot program related to the electronic filing of import information with CBP. Because shipments into the United States from Puerto Rico are not treated as imports by CBP, such shipments are not covered by this initiative.)

The TTB regulations at 27 CFR part 41 address the importation of tobacco products, processed tobacco, and cigarette papers and tubes. In that part, § 41.81 requires certain information to be submitted to CBP regarding imported tobacco products or cigarette papers or tubes, and § 41.86 requires information to be submitted using a specified form in order for tobacco products or cigarette papers and tubes imported and released without payment of tax to be delivered to a specified TTB-permitted manufacturer or export warehouse proprietor.

Electronic Submission of TTB-Required Information to CBP

On March 27, 2014, TTB published in the **Federal Register** (79 FR 17029) a direct final rule, T.D. TTB–119, that among other amendments added a new section to 27 CFR part 73. Part 73 addresses the electronic submission of forms and electronic signatures. The new section, 27 CFR 73.40, provides that a regulated entity may satisfy any requirement in the TTB regulations to submit a form to another agency by submitting the form to the agency by electronic means, as long as the agency provides for, and authorizes, the electronic submission of the form and any registration and other requirements to use the

electronic submission functionality are met. In part 73, the term “form” includes all documents required to be submitted.

The International Trade Data System

The International Trade Data System (ITDS) is an interagency program to establish a single electronic access point (or “single window”) through which importers and exporters may submit the data required by Federal government agencies for international trade transactions. The Security and Accountability for Every Port Act of 2006 (SAFE Port Act, Pub L. 109–347) mandated participation in ITDS for all agencies that require documentation for clearing or licensing the importation and exportation of cargo. The purpose of ITDS is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. TTB is one of the Partner Government Agencies (PGAs) working with CBP to implement ITDS.

The “single window” utilizes the Automated Commercial Environment (ACE), which is maintained by CBP. ACE allows importers and exporters to enter one set of data for each consignment of imported or exported articles. Currently, importers and exporters that are regulated by multiple agencies or that import or export commodities regulated by multiple agencies must submit data to those agencies through various channels, often in paper form. Through the

implementation of ITDS, data will be entered into ACE and then made available to each government agency.

The PGA Message Set defines the agency-specific information that importers will submit directly through the Automated Broker Interface (ABI), which transfers data into ACE as part of the CBP entry process. After the importer submits the data, it will be available to TTB, along with certain other data collected through the ABI filing.

Executive Order—Streamlining the Export/Import Process for America's Businesses

On February 19, 2014, the President issued Executive Order 13659, "Streamlining the Export/Import Process for America's Businesses."¹ The Executive Order mandated that ITDS be operational by December 31, 2016. It also directed Federal agencies that use ITDS to review their existing regulations for the import and export of goods to determine whether those regulations need to be modified to implement ITDS and further improve and streamline existing processes for import and export, and if so, to initiate rulemaking to implement those modifications.

ITDS Pilot Program

TTB intends to initiate a pilot program beginning no earlier than August 19, 2015, to test the electronic collection and transfer of data from importers through CBP to TTB. Instead of submitting the paper forms and documents currently required in TTB's regulations, participating U.S. importers and brokers will follow

¹ See <http://www.whitehouse.gov/the-press-office/2014/02/19/executive-order-streamlining-exportimport-process-america-s-businesses>.

the draft ACE Filing Instructions for TTB-Regulated Commodities (Filing Instructions), described below, and use the PGA Message Set to send TTB-specific data elements and electronic images through ABI to ACE for review by TTB. The specific data elements are outlined in the draft Filing Instructions. TTB anticipates that this pilot program will help TTB and importers prepare for an efficient transition to ACE.

To be eligible to apply for this pilot, importers must have the ability to file ACE entry summaries and ACE cargo release, and must file entries for TTB-regulated commodities. All pilot program participants are required to use a software program that has completed ACE certification testing for the PGA Message Set.

Upon commencement of this test, a limited number of ports of entry will be accepting PGA Message Set data. A list of those ports and the dates they become operational is provided on the following CBP Web site:

<http://www.cbp.gov/document/guidance/list-aceitds-pga-message-set-pilot-ports>.

CBP may expand the pilot functionality to additional ports in the future. Test participants and interested parties should consult the above-referenced Web site for changes or additions to the list of ports. Importers must import articles regulated by TTB through a listed port in order to participate in the pilot program.

As discussed earlier, TTB's import regulations currently require importers to submit to CBP various forms and documents in paper format. Importers who are accepted for participation in the pilot program will be supplying information electronically in accordance with the Filing Instructions. TTB will consider pilot

program participants who follow the Filing Instructions to be in compliance with the current requirements to submit paper documents. TTB will provide further details in its approval letters to accepted applicants.

The PGA Message Set that will be used in the pilot program incorporates requirements that will be published in a future issue of the **Federal Register** as a notice of proposed rulemaking, with a solicitation for public comment. (The notice of proposed rulemaking will propose amendments to the regulations both to accommodate the use of ITDS and to improve TTB's overall import processes, pursuant to the Executive Order discussed above.) The final PGA Message Set used for importation of TTB-regulated commodities will be consistent with the TTB regulations established for those commodities.

To apply to participate in the pilot program, please contact John Kyranos, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone (202) 453-2265, extension 001; or e-mail regulations@ttb.gov. For technical questions related to the Automated Commercial Environment (ACE) or Automated Broker Interface (ABI) transmissions, contact Steven Zaccaro at steven.j.zaccaro@cbp.dhs.gov.

Please note that acceptance into the pilot program is based on the eligibility of the participant, along with TTB's need to include a broad cross-section of importers of the commodities regulated by TTB in order to evaluate the effectiveness of the system. In addition, participants may have different start dates.

Draft Filing Instructions Available for Comment

To facilitate implementation of ITDS and ACE for importers of alcohol and tobacco products, TTB is making available for review and comment a draft document containing instructions for importers of TTB-regulated articles on how to use the new system.

The draft ACE Filing Instructions for TTB-Regulated Commodities document made available via this notice is intended to provide a framework for discussion, review, and comment, in order to aid the system development. The draft Filing Instructions document also reflects requirements that TTB may propose through the future publication in the Federal Register of a notice of proposed rulemaking, with a solicitation for public comment. The comments TTB receives on that notice of proposed rulemaking, as well as the comments received on the draft Filing Instructions themselves through this notice, may result in changes to the Filing Instructions.

The draft Filing Instructions are available on Regulations.gov as part of Docket No. TTB–2015–0012 on Regulations.gov. You can also obtain a copy by contacting John Kyranos as described above.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on the draft Filing Instructions. TTB is particularly interested in comments related to the usability of the Filing Instructions. TTB will also accept comments regarding the pilot program through the duration of the test.

Submitting Comments

You may submit comments on the Filing Instructions or on the pilot program by using one of the following three methods:

- Federal e-Rulemaking Portal: You may send comments via the online comment form posted with this notice within Docket No. TTB–2015–0012 on Regulations.gov, the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 156 on the TTB Web site at <http://www.ttb.gov/rrd/fedreg-misc.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on the “Help” tab.
- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005.
- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Suite 400, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 156 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not acknowledge receipt of comments, and TTB considers all comments as originals.

In your comment, please clearly state if you are commenting for yourself or on behalf of an association, business, or other entity. If you are commenting

on behalf of an entity, your comment must include the entity's name as well as your name and position title. In your comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the online comment form. If you comment via postal mail or hand delivery/courier, please submit your entity's comment on letterhead.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

TTB will post, and you may view, copies of this notice, the Filing Instructions, and any online or mailed comments received about this proposal within Docket No. TTB-2015-0012 on the Federal e-rulemaking portal, Regulations.gov, at <http://www.regulations.gov>. A direct link to that docket is available on the TTB Web site at <http://www.ttb.gov/rrd/fedreg-misc.shtml> under Notice No. 156. You may also reach the relevant docket through the Regulations.gov search page at <http://www.regulations.gov>. For information on how to use Regulations.gov, click on the site's "Help" tab.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You may also view copies of this notice, the Filing Instructions, and any electronic or mailed comments that TTB receives about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11- inch page. Contact TTB's information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

Drafting Information

Andrew Malone of the Regulations and Rulings Division drafted this notice.

Signed: July 30, 2015.

John J. Manfreda,

Administrator.

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